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16 **UNITED STATES DISTRICT COURT**

17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 FIRST UNITARIAN CHURCH OF LOS )  
ANGELES, *et al.*, )

19 )  
20 Plaintiffs, )

v. )

21 NATIONAL SECURITY AGENCY, *et al.*, )

22 Defendants. )

Case No. 13-cv-3287-JSW

**[PROPOSED] PRESERVATION ORDER  
PER COURT REQUEST OF MARCH 19,  
2014**

Date: March 19, 2014

Time: 2:00 p.m.

Hon. Jeffrey S. White

Courtroom 11 - 19th Floor

1 The Court enters the following evidence preservation order:

2 A. The Court reminds all parties of their duty to preserve evidence that may be relevant  
3 to this action. The duty extends to documents, data and tangible things in the possession, custody  
4 and control of the parties to this action, and any employees, agents, contractors, carriers, bailees or  
5 other non-parties who possess materials reasonably anticipated to be subject to discovery in this  
6 action. Counsel are under an obligation to exercise efforts to identify and notify such non-parties,  
7 including employees of corporate or institutional parties.

8 B. "Documents, data and tangible things" is to be interpreted broadly to include  
9 writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic  
10 messages, voicemail, e-mail, telephone message records or logs, computer and network activity  
11 logs, hard drives, backup data, removable computer storage media such as tapes, disks and cards,  
12 printouts, document image files, web pages, databases, spreadsheets, software, books, ledgers,  
13 journals, orders, invoices, bills, vouchers, checks, statements, worksheets, summaries,  
14 compilations, computations, charts, diagrams, graphic presentations, drawings, films, digital or  
15 chemical process photographs, video, phonographic, tape or digital recordings or transcripts  
16 thereof, drafts, jottings and notes. Information that serves to identify, locate, or link such material,  
17 such as file inventories, file folders, indices and metadata, is also included in this definition.

18 C. "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the  
19 integrity of all documents, data and tangible things reasonably anticipated to be subject to  
20 discovery under FRCP 26, 45 and 56(e) in this action. Preservation includes taking reasonable  
21 steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration,  
22 wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional  
23 handling that would make material incomplete or inaccessible.

24 D. This order extends to information potentially relevant to or reasonably anticipated to  
25 be subject to discovery under the currently operative Complaint in this case (ECF No. 9) and any  
26 subsequent amended complaints. For the purposes of clarity, the key allegations of the current  
27 complaint with regard to evidence preservation are:  
28

1 3. This lawsuit challenges an illegal and unconstitutional program of  
2 dragnet electronic surveillance, specifically the bulk acquisition, seizure,  
3 collection, storage, retention, and searching of telephone communications  
4 information (the “Associational Tracking Program”) conducted by the  
5 National Security Agency (NSA) and the other defendants (collectively,  
6 “Defendants”).

7 5. The communications information that Defendants collect in the  
8 Associational Tracking Program is retained and stored by Defendants in one  
9 or more databases. The Program collects information concerning all calls  
10 wholly within the United States, including local telephone calls, as well as  
11 all calls between the United States and abroad, regardless of a connection to  
12 international terrorism, reasonable suspicion of criminality, or any other  
13 form of wrongdoing. This information is stored for at least five years.  
14 Defendants have indiscriminately obtained, and stored the telephone  
15 communications information of millions of ordinary Americans as part of  
16 the Associational Tracking Program.

17 53. The Associational Tracking Program is electronic surveillance that  
18 collects and acquires telephone communications information for all  
19 telephone calls transiting the networks of all major American  
20 telecommunication companies, including Verizon, AT&T, and Sprint. Every  
21 day, the Associational Tracking Program collects information about millions  
22 of telephone calls made by millions of Americans. This includes information  
23 about all calls made wholly within the United States, including local  
24 telephone calls, as well as communications between the United States and  
25 abroad.

26 55. Beginning in 2001, participating phone companies voluntarily  
27 provided telephone communications information for the Associational  
28 Tracking program to Defendants. Since 2006, the FISC, at the request of  
Defendants, has issued orders under 50 U.S.C. § 1861 purporting to compel  
the production of communications information, including communications  
information not yet in existence, on an ongoing basis, as part of the  
Associational Tracking Program.

60. The telephone communications information Defendants seize, collect  
and acquire in bulk as part of the Associational Tracking Program is retained  
and stored by Defendants in one or more databases . . . information of  
millions of ordinary Americans, including Plaintiffs, their members, and  
staffs, as part of the Associational Tracking Program.

66. Defendants’ bulk seizure, collection, acquisition, and retention of the  
telephone communications information of Plaintiffs, their members, and  
their staffs is done without lawful authorization, probable cause, and/or  
individualized suspicion. It is done in violation of statutory and  
constitutional limitations and in excess of statutory and constitutional  
authority. Any judicial, administrative, or executive authorization (including  
any order issued pursuant to the business records provision of 50 U.S.C.  
§ 1861) of the Associational Tracking Program or of the acquisition and

1 retention of the communications information of Plaintiffs, their members,  
2 and their staffs is unlawful and invalid.

3 73. Defendants' searching of the telephone communications information  
4 of Plaintiffs is done without lawful authorization, probable cause, and/or  
5 individualized suspicion. It is done in violation of statutory and  
6 constitutional limitations and in excess of statutory and constitutional  
7 authority. Any judicial, administrative, or executive authorization (including  
8 any business records order issued pursuant 50 U.S.C. § 1861) of the  
9 Associational Tracking Program or of the searching of the communications  
10 information of Plaintiffs is unlawful and invalid.

11 Pursuant to the above-referenced allegations, this Order extends to documents, data and  
12 tangible things at issue without regard to when the government created or acquired them after 2001  
13 or the legal authority under which the government created or acquired them, whether under orders  
14 of the Foreign Intelligence Surveillance Court or otherwise. The order includes, but is not limited  
15 to, the telephone records at issue in the government's notice to the Court in March 2014 (*see, e.g.*,  
16 ECF No. 95 in 13-cv-3287-JSW) and all similar records.

17 E. Counsel are directed to inquire of their respective clients if the business or  
18 government practices of any party involve the routine destruction, recycling, relocation, or  
19 mutation of such materials and, if so, direct the party, to the extent practicable for the pendency of  
20 this order, either to

- 21 (1) halt such business or government practices;
- 22 (2) sequester or remove such material from the business or government  
23 practices; or
- 24 (3) arrange for the preservation of complete and accurate duplicates or copies of  
25 such material, suitable for later discovery if requested.

26 **IT IS SO ORDERED.**

27 Dated: \_\_\_\_\_

28 \_\_\_\_\_  
Honorable Jeffrey S. White  
United States District Court Judge